

Title: Energy Policy Act of 2005, Section 1835, Split-Estate Federal Oil and Gas Leasing and Development Practices

Task: The Secretary shall review the current policies and practices with respect to management of Federal subsurface oil and gas development activities and their effects.

- (2) a comparison of the surface owner consent provisions in section 714 of the Surface Mining Control and Reclamation Act of 1977 (30U.S.C.1304) concerning surface mining of Federal coal deposits and the surface owner consent provisions for oil and gas development, including coalbed methane production; and
- (3) recommendations for administrative or legislative action necessary to facilitate reasonable access for Federal oil and gas activities while addressing surface owner concerns and minimizing impacts to private surface.

Brief Summary:

Under the provisions of Section 714 of the Surface Mining Control and Reclamation Act (SMCRA) of 1977 (30U.S.C.1304), BLM is required to notify the surface owner and obtain the surface owner's consent prior to leasing Federal coal for surface mining. Surface owner consent is not required for underground mining.

There are no provisions for obtaining surface owner consent prior to the oil and gas lease sale in either the Stock Raising Homestead Act of 1916 or the Mineral Leasing Act of 1920, as updated.

The impact to the surface owner from surface mining coal is substantially greater than the impact of developing oil and natural gas resources, including coalbed methane.

There is an option for underground mining of coal if a surface owner refuses surface coal mining. For oil and gas development, the operator can typically directionally drill ¼ mile to ½ mile for targets from 5,000 to 10,000 feet or greater in depth. For both underground mining and directional drilling there must be surface area available nearby for the entrance to the mine or to set up the drilling rig.

(BLM sections are shaded.)

Section 714 of the Surface Mining Control and Reclamation Act of 1977 (30U.S.C.1304)

PUBLIC LAW 95-87

Surface Mining Control and Reclamation Act of 1977

An unofficial OSM compilation of P.L. 95-87 and all revisions through December 31, 1993

SURFACE OWNER PROTECTION

[30 U.S.C. 1304]

SEC. 714. (a) The provisions of this section shall apply where coal owned by the United States under land the surface rights to which are owned by a surface owner as defined in this section is to be mined by methods other than underground mining techniques.

(b) Any coal deposits subject to this section shall be offered for lease pursuant to section 2(a) of the Mineral Lands Leasing Act of 1920, as amended.

(c) The Secretary shall not enter into any lease of Federal coal deposits until the surface owner has given written consent to enter and commence surface mining operations and the Secretary has obtained evidence of such consent. Valid written consent given by any surface owner prior to the enactment of this Act shall be deemed sufficient for the purposes of complying with this section.

(d) In order to minimize disturbance to surface owners from surface coal mining of Federal coal deposits and to assist in the preparation of comprehensive land-use plans required by section 2(a) of the Mineral Lands Leasing Act of 1920, as amended, the Secretary shall consult with any surface owner whose land is proposed to be included in a leasing tract and shall ask the surface owner to state his preference for or against the offering of the deposit under his land for lease. The Secretary shall, in his discretion but to the maximum extent practicable, refrain from leasing coal deposits for development by methods other than underground mining techniques in those areas where a significant number of surface owners have stated a preference against the offering of the deposits for lease.

(e) For the purpose of this section the term "surface owner" means the natural person or persons (or corporation, the majority stock of which is held by a person or persons who meet the other requirements of this section) who--

(1) hold legal or equitable title to the land surface;

(2) have their principal place of residence on the land; or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface coal mining operations; or receive directly a significant portion of their income, if any, from such farming or ranching operations; and

<p>(3) have met the conditions of paragraphs (1) and (2) for a period of at least three years prior to the granting of the consent. In computing the three-year period the Secretary may include periods during which title was owned by a relative of such person by blood or marriage during which period such relative would have met the requirements of this subsection.</p> <p>(f) This section shall not apply to Indian lands.</p> <p>(g) Nothing in this section shall be construed as increasing or diminishing any property rights by the United States or by any other landowner.</p>		
	Requirements	Policy or Regulation
Definitions	<p>§ 3400.0-5 Definitions.</p> <p>gg) <i>Qualified surface owner</i></p> <p>“means the natural person or persons (or corporation, the majority stock of which is held by a person or persons otherwise meeting the requirements of this section) who:”</p>	43 CFR 3400 Coal Management Regulations
Land Use Planning	<p><u>Protective Leasing Stipulations - Oil and Gas:</u></p> <p>BLM notifies the public of their opportunity to participate and comment on the preparation of land use plans and amendments. BLM does not specifically notify surface owners that land use planning decisions are being made which could affect the oil and gas development actions on their surface. (Planning decisions include: No Lease; Lease with Standard Terms and Conditions; Lease with Major Constraints; Lease with Moderate Constraints; and are typically based on resources such as wildlife, steep slopes, wetlands.)</p> <p><u>Issue & Recommendation:</u></p>	<p>Standard Land Use Planning Practice</p> <p>Also refer to: 43CFR1610.2</p>
	<p><u>Protective Leasing Stipulations - Coal:</u></p> <p>(ii) For the purposes of this paragraph, any surface owner who has previously granted written consent to any party to mine by other than underground mining techniques shall be deemed to have expressed a preference in favor of mining. Where a significant number of surface owners in an area have expressed a</p>	43 CFR 3420.1-4 Coal Management Regulations

	<p>preference against mining those deposits by other than underground mining techniques, that area shall be considered acceptable for further consideration only for development by underground mining techniques. In addition, the area may be considered acceptable for further consideration for leasing for development by other than underground techniques if there are no acceptable alternative areas available to meet the regional leasing level.</p> <p>(iii) An area eliminated from further consideration by this subsection may be considered acceptable for further consideration for leasing for mining by other than underground mining techniques if:</p> <p>(A) The number of surface owners who have expressed their preference against mining by other than underground techniques is reduced below a significant number because such surface owners have given written consent for such mining or have transferred ownership to unqualified surface owners; and</p>	
	<p><u>Surface Owner Consultation - Preference for or against surface occupancy – Oil and Gas:</u></p> <p>There are no surface owner consent provisions; however, public participation during the land use planning process provides opportunity for surface owners to provide input into potential leasing stipulations.</p> <p><u>Issue & Recommendation:</u></p>	No Statutory Provision

	<p><u>Surface Owner Consultation - Preference for or against surface occupancy – Coal:</u> General requirements for land use planning. (4)(i) While preparing a comprehensive land use plan or land use analysis, the Bureau of Land Management shall consult with all surface owners who meet the criteria in paragraphs (gg) (1) and (2) of §3400.0–5 of this title, and whose lands overlie coal deposits, to determine preference for or against mining by other than underground mining techniques.</p> <p>After public notice, the Bureau of Land Management or other surface management agency shall conduct a public hearing on the proposed comprehensive land use plan or land use analysis if it involves the potential for coal leasing before it is adopted if such a hearing is requested by any person who is or may be adversely affected by the adoption of the plan. A hearing conducted under part 1600 of this title of this chapter shall fulfill this requirement.</p>	<p>43 CFR 3420.1-4 Coal Management Regulations</p> <p>§ 3420.1-5 Hearing requirements.</p>
Pre-Lease Notification	<p><u>Pre-lease Surface Owner Notification – Oil and Gas:</u> BLM notifies the public of pending lease sales and provides a 45-day review period. BLM posts the Competitive Sale List and stipulations on the BLM State Office website; mails paper copies to those parties who have requested copies, including other surface managing agencies; and posts the List and stipulations in the affected BLM Field Offices. BLM does not directly notify the surface owner prior to offering for lease subsurface minerals under the surface estate.</p> <p>Results of competitive lease sales and day after the sale filings are posted on the BLM State Office website. Paper copies are available upon request.</p> <p><u>Issue & Recommendation:</u></p>	<p>Standard Pre-lease Notification Practice Also refer to: 43CFR3120.4-2</p>
	<p><u>Pre-lease Surface Owner Notification - Coal:</u> Notice of sale and detailed statement. (a) Prior to the lease sale, the authorized officer shall publish a notice of the proposed sale in the Federal Register and in a newspaper(s) of general circulation in the county or equivalent political</p>	

	<p>subdivision in which the tracts to be sold are situated. The newspaper notice shall be published not less than once a week for 3 consecutive weeks. BLM will post notice of the sale in BLM State Office where the coal lands are managed. BLM will also mail notice to any surface owner of lands noticed for sale and to any other person who has requested notice of sales in the area. The lease sale shall not be held until at least 30 days after such posting in the State Office.</p>	
	<p><u>Additional Surface Owner Consent Provisions in Coal Management Regulations:</u></p> <p>43 CFR 3427 Coal Management Regulations</p> <p>Subpart 3427—Split Estate Leasing</p> <p>§ 3427.0-1 Purpose.</p> <p>The purpose of this subpart is to set out the protection that shall be afforded qualified surface owners of split estate lands (43 CFR 3400.0–5) and the requirements for submission of evidence of written surface owner consent from qualified surface owners of split estate lands.</p> <p>[47 FR 33142, July 30, 1982]</p> <p>§ 3427.0-3 Authority.</p> <p>(a) These regulations are issued under the authority of the statutes cited in §3400.0–3 of this title.</p> <p>(b) These regulations primarily implement section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304), as construed in Solicitor's Opinion M–36909, 86 I.D. 28 (1979).</p>	

	<p>§ 3427.0-7 Scope.</p> <p>The surface owner consent provisions of the Surface Mining Control and Reclamation Act do not apply:</p> <ul style="list-style-type: none"> (a) To preference right lease applications; and (b) If the split estate coal is to be mined by underground mining techniques (43 CFR 3500.0–5). <p>§ 3427.1 Deposits subject to consent.</p> <p>On split estate lands (43 CFR 3400.0–5(kk)) where the surface is owned by a qualified surface owner, coal deposits that will be mined by other than underground mining techniques shall not be included in a lease sale without evidence of written consent from the qualified surface owner (43 CFR 3400.0–5(gg)) allowing entry and commencement of surface mining operations.</p> <p>[47 FR 33142, July 30, 1982]</p> <p>§ 3427.2 Procedures.</p> <ul style="list-style-type: none"> (a)(1) Each written consent or evidence of written consent shall be filed with the appropriate Bureau of Land Management State office (43 CFR subpart 1821). For lands offered for lease sale pursuant to subpart 3420 of this title, consents or written evidence thereof shall be filed on or before a date prior to the lease sale specified in a notice published in the Federal Register. For lands offered for lease sale pursuant to subpart 3425 of this title, consents or written evidence thereof shall be filed prior to the posting of the lease sale notice. (2) Statement of refusal to consent shall be filed with the appropriate Bureau of Land Management State Office, but such statement shall be accepted for filing only during activity planning. (b) Written consent, evidence of written consent, or statement of refusal to consent may be filed by any private person or persons with a potential interest in the lease sale of split estate lands.
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	<p>(c) Such filing shall, at a minimum, contain the present legal address of the qualified surface owner, and the name, ownership, interest, if any, and legal address of the party making the filing, and if it is a written consent or evidence thereof, a copy of the written consent or evidence thereof.</p> <p>(d) The authorized officer shall verify that the written consent or evidence of such consent meets all of the following requirements, and that the statement of refusal to consent meets the requirements of paragraphs (d)(2) and (3) of this section:</p> <p>(1) The right to enter and commence mining is transferable to whoever makes the successful bid in a lease sale for a tract which includes the lands to which the consent applies. A written consent shall be considered transferable only if it provides that after the lease sale for the tract to which the consent applies:</p> <p>(i) The successful bidder shall assume all rights and obligations of the holder of the consent, including the obligation to make all payments to the grantor of the consent and to reimburse the holder of the consent for all money previously paid to the grantor under the consent contract; and</p> <p>(ii) Neither the holder nor the grantor of the consent has any right under the consent contract to prevent the successful bidder from assuming the rights and obligations of the holder of the consent by imposing additional costs or conditions or otherwise;</p> <p>(2) The named surface owner is a qualified surface owner as defined in §3400.0–5(gg) of this title; and</p> <p>(3) The title for all split estate lands described in the filing is held by the named qualified surface owners.</p> <p>(e) Upon receipt of a filing from anyone other than the named qualified surface owner, the authorized officer shall contact the named qualified surface owner and request his confirmation in writing that the filed, written consent or evidence thereof to enter and commence mining has been granted, and that the filing fully discloses all of the terms of the written consent, or that the refusal to consent is accurate.</p> <p>(f) The applicable conditions of paragraphs (d) and (e) of this section shall be met prior to the lease sale for lands to</p>
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	<p>which the consents apply.</p> <p>(g) The authorized officer shall in all cases notify the person or persons filing the written consent, evidence of written consent, or statement of refusal to consent of the results of the review of the filing, including any request for additional information needed to satisfy the requirements of this subpart in cases where insufficient information was supplied with the original filing.</p> <p>(h) The purchase price of any applicable written consent from a qualified surface owner submitted and verified prior to posting of the notice of lease sale shall be included with the description of the tract(s) in the notice of lease sale, and the other terms of the consent shall be included in the detailed statement of the sale for the tract(s). Any consent filed after posting of the notice of lease sale shall be placed in the official file for the lease tract(s) to which the consent applies and shall be available for inspection by the public in the appropriate Bureau of Land Management State office (43 CFR subpart 1821).</p> <p>(i) Any statement of refusal to consent shall be treated as controlling until the activity planning cycle that includes the area covered by the refusal to consent is repeated or the surface estate is sold. When an activity planning cycle is initiated, the qualified surface owner shall be notified that his/her prior statement of refusal has expired and shall be given the opportunity to submit another statement.</p> <p>(j) If the surface owner fails to provide evidence of qualifications in response to surface owner consultation or to a written request for such evidence, and if the authorized officer is unable to independently determine whether or not the surface owner is qualified, the authorized officer shall presume that the surface owner is unqualified. The authorized officer shall notify the surface owner in writing of this determination and shall provide the surface owner an opportunity to appeal the determination.</p> <p>(k) Any surface owner determined to be unqualified by decision of the field official of the surface management agency shall have 30 days from the date of receipt of such decision in which he/she may appeal the decision to the appropriate State Director of the Bureau of Land Management. The surface owner shall have the right to appeal the State Director's decision to the Director, Bureau of Land Management, within 30 days of receipt of that decision. Both appeals under this paragraph shall be in writing. As an exception to the provisions of §3000.4 of this title, the</p>
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	<p>decision of the Director shall be the final administrative action of the Department of the Interior.</p> <p>[44 FR 42615, July 19, 1979, as amended at 47 FR 33142, July 30, 1982; 48 FR 37656, Aug. 19, 1983]</p> <p>§ 3427.3 Validation of information.</p> <p>Any person submitting a written consent shall include with his filing a statement that the evidence submitted, to the best of his knowledge, represents a true, accurate, and complete statement of information regarding the consent for the area described.</p> <p>§ 3427.4 Pre-existing consents.</p> <p>An otherwise valid written consent given by a qualified surface owner prior to August 3, 1977, shall not be required to meet the transferability of §3427.2(d)(1) of this title.</p> <p>[47 FR 33142, July 30, 1982]</p> <p>§ 3427.5 Unqualified surface owners.</p> <p>(a) Lease tracts involving surface owners who are not qualified (see §3400.0–5(gg)) shall be leased subject to the protections afforded the surface owner by the statute(s) under which the surface was patented and the coal reserved to the United States. No consent from an unqualified surface owner is required under this subpart before the authorized officer may issue a lease for such a tract (see section 9 of the Stock-Raising Homestead Act (43 U.S.C. 249); the Act of March 3, 1909 (30 U.S.C. 81); section 3 of the Act of June 22, 1910 (30 U.S.C. 85); and section 5 of the Act of June 21, 1949 (30 U.S.C. 54)).</p> <p>(b) The provisions of §§3427.1 through 3427.4 of this title are inapplicable to any lease tract on which a consent has been given by an unqualified surface owner. The high bidder at the sale of such a tract is not required to submit any evidence of written consent before the authorized officer may issue the lease unless the statute establishing the relative rights of the United States (and its lessees) and the surface owner so requires.</p>
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	[47 FR 33142, July 30, 1982]
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